

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Cy A. Stein  
Serial No.: 09/753,169  
Filed : January 2, 2001  
For : OLIGONUCLEOTIDE INHIBITORS OF bcl-xL

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MAR 12 2002  
OFFICE OF PETITIONS

1185 Avenue of the Americas  
New York, New York 10036  
December 26, 2001

Honorable Commissioner for Patents and Trademarks  
Washington, D.C. 20231  
BOX: DAC

SIR:

PETITION TO REVIVE UNINTENTIONALLY ABANDONED APPLICATION UNDER  
37 C.F.R. §1.137(b)

This Petition is submitted to revive the above-identified unintentionally abandoned application under 37 C.F.R. §1.137(b). Applicant received a November 28, 2001 Notice of Incomplete Reply (Non-provisional), a copy of which is attached hereto as **Exhibit 1**. The November 28, 2001 Notice of Incomplete Reply (Non-provisional) stated that applicant's September 25, 2001 reply to a March 7, 2001 Notice to File Missing Parts - Filing Date Granted was incomplete. The subject application was abandoned for failure to timely or properly respond to the Notice to File Missing Parts of Application Filing Date Granted issued by the United States Patent and Trademark Office on July March 7, 2001.

Background

The March 7, 2001 Notice to File Missing Parts - Filing date granted stated that the Patent and Trademark Office required a signed Declaration and a Sequence listing pertaining to the above-identified application. In a September 25, 2001 reply to the March 7, 2001 Notice to File Missing Parts applicant included:

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- (1) a Communication in Response to the March 7, 2001 Notice to File Missing Parts of Application Filing Date Granted;
- (2) a copy of the Notice, attached thereto as Exhibit A;
- (3) an executed Declaration and Power of Attorney pursuant to 37 C.F.R. §1.53(f) and in compliance with 37 C.F.R. §1.63, attached thereto as Exhibit B;
- (4) a check including the amount of \$65.00 for the surcharge under 37 C.F.R. §1.16(e) and the \$945.00 fee for a Five Month Extension of Time; and
- (5) a stamped postcard for acknowledgment of receipt by the Patent and Trademark Office.

A copy of the Communication, including Exhibits A-B is attached hereto as **Exhibit 2**. A copy of the check is attached hereto as **Exhibit 3**. A copy of the postcard is attached hereto as **Exhibit 4**; the postcard is stamped received by the OIPE of the U.S. Patent and Trademark Office on September 28, 2001. However, applicant inadvertently omitted to include a Computer Readable Format and a hard copy Sequence listing, and a Statement in Accordance with 1.821(f). Accordingly, applicant was of the belief that the required response had been timely submitted. Applicant was unaware that the reply was incomplete and was subsequently unable to complete the reply before the inextensible deadline of October 7, 2001 because the Notice of Incomplete Reply was not mailed to the applicant by the United States Patent and Trademark Office until November 28, 2001.

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Requirements of Petition to Revive

A petition under 37 C.F.R. §1.137(b) must be accompanied by:

- (1) the required reply, unless it has been previously submitted;
- (2) the petition fee set forth in 37 C.F.R. §1.17(m);
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional; and
- (4) any terminal disclaimer (and fee as set forth in §120(d)) required pursuant to 37 C.F.R. §1.137 (c) for a utility application filed before June 8, 1995.

Required Reply Under 37 C.F.R. §1.137(b)(1)

The November 28, 2001 Notice of Incomplete Reply (Non-provisional) required under 37 C.F.R. §1.821-1.825:

- (1) Computer Readable Format Sequence Listing;
- (2) a paper copy Sequence Listing;
- (3) a Statement in Accordance with 37 C.F.R. § 1.821(f);
- (4) a \$980.00 fee for extension of response within fifth month as set forth in 37 C.F.R. § 1.17(a); and
- (5) a copy of the Notice.

In response to the Notice of Incomplete Reply (Nonprovisional) applicant encloses a Computer Readable Format Sequence Listing, a paper copy Sequence Listing (**Exhibit 5**), a Statement in Accordance with 37 C.F.R. § 1.821(f) (**Exhibit 6**), a check including the \$980.00 fee for extension of response within fifth month as set forth in 37 C.F.R. § 1.17(a) and a copy of the Notice (**Exhibit 1**).

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Filed : January 2, 2001  
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Petition Fee Required Under 37 C.F.R. §1.137(b) (2)

The fee for a small entity for a Petition under 37 C.F.R. §1.137(b) as set forth in 37 C.F.R. §1.17(m) is SIX HUNDRED FORTY DOLLARS (\$640.00) for a small entity. Applicant has previously established Small Entity Status under 37 C.F.R. §1.9(f) and §1.27(d). A check including this amount is enclosed.

Statement that the Entire Delay in Filing the Required Reply was Unintentional Under 37 C.F.R. §1.137(b) (3)

Applicants hereby state that the entire delay in filing the required reply from the original due date for the reply until the filing of this Petition pursuant to 37 C.F.R. §1.137(b), was unintentional.

Terminal Disclaimer Under 37 C.F.R. §1.137(b) (4)

Because the subject application was filed on January 2, 2001, which was after June 8, 1995, 37 C.F.R. §1.137(c) does not require any terminal disclaimer to be filed.

Conclusion

In view of the foregoing, applicants earnestly solicit an expeditious revival of the subject application so that it may proceed to examination of the claims now pending in the subject application.

If a telephone interview would be of assistance in advancing prosecution of the subject application, applicants' undersigned attorney invites the Examiner to telephone him at the number

Applicant : Cy A. Stein  
Serial No.: 09/753,169  
Filed : January 2, 2001  
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provided below.

No fee, other than the enclosed \$1620.00 total fee for a five-month extension of time and Petition under 37 C.F.R. §1.137(b) for a small entity is deemed necessary in connection with the filing of this Petition. However, if any fee other is required, authorization is hereby given to charge the amount of any such fee to Deposit Account No. 03-3125.


Respectfully submitted,



John P. White  
Registration No. 28,678  
Peter J. Phillips  
Registration No. 29,691  
Attorneys for Applicants  
Cooper & Dunham LLP  
1185 Avenue of the Americas  
New York, New York 10036  
(212) 278-0400

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:

Assistant Commissioner for Patents,  
Washington, D.C. 20231.

 12/26/01  
Peter J. Phillips Date  
Registration No. 29,691



## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/753,169	01/02/2001	Cy A. Stein	55669-A-PCT-US/JPW/GJC

CONFIRMATION NO. 9695

## FORMALITIES LETTER



\*OC00000007132624\*

John P. White  
Cooper & Dunham LLP  
1185 Avenue of the Americas  
New York, NY 10036

Date Mailed: 11/28/2001

## NOTICE OF INCOMPLETE REPLY (NONPROVISIONAL)

*Filing Date Granted*

The U.S. Patent and Trademark Office has received your reply on 09/28/2001 to the Notice to File Missing Parts (Notice) mailed 03/07/2001 and it has been entered into the nonprovisional application. The reply, however, does not include the following items required in the Notice.

The period of reply remains as set forth in the Notice. You may, however, obtain EXTENSIONS OF TIME under the provisions of 37 CFR 1.136 (a) accompanied by the appropriate fee (37 CFR 1.17(a)).

A complete reply must be timely filed to prevent ABANDONMENT of the above-identified application.

- This application clearly fails to comply with the requirements of 37 C.F.R. 1.821-1.825. Applicant's attention is directed to the final rulemaking notice published at 55 FR 18230 (May 1, 1990), and 1114 OG 29 (May 15, 1990). If the effective filing date is on or after July 1, 1998, see the final rulemaking notice published at 63 FR 29620 (June 1, 1998) and 1211 OG 82 (June 23, 1998). If the effective filing date is on or after September 8, 2000, see the final rulemaking notice published in the Federal Register at 65 FR 54604 (September 8, 2000) and 1238 OG 145 (September 19, 2000). Applicant must provide an initial computer readable form (CRF) copy of the "Sequence Listing", an initial paper or compact disc copy of the "Sequence Listing", as well as an amendment directing its entry into the application. Applicant must also provide a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d). If applicant desires the sequence listing in the instant application to be identical with that of another application on file in the U.S. Patent and Trademark Office, such request in accordance with 37 CFR 1.821(e) may be submitted in lieu of a new CRF.

For questions regarding compliance to these requirements, please contact:

- For Rules Interpretation, call (703) 308-4216
- To Purchase PatentIn Software, call (703) 306-2600
- For PatentIn Software Program Help, call (703) 306-4119 or e-mail at patin21help@uspto.gov or patin3help@uspto.gov

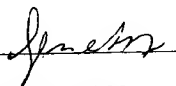
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OFFICE OF PETITIONS

Applicant: Cy A. Stein  
U.S. Serial No.: 09/753,169  
Filed: January 2, 2001  
Exhibit 1

*A copy of this notice MUST be returned with the reply.*

  
\_\_\_\_\_  
Customer Service Center

Initial Patent Examination Division (703) 308-1202

PART 2 - COPY TO BE RETURNED WITH RESPONSE

#9

Dkt. 55669-A-PCT-US/JPW/PJP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of : Cy A. Stein  
Serial No. : 09/753,169  
Date Filed : January 2, 2001  
For : OLIGONUCLEOTIDE INHIBITORS OF BCL-XL

1185 Avenue of the Americas  
New York, N.Y. 10036  
September 25, 2001

Assistant Commissioner for Patents  
Washington, D.C. 20231

Sir:

**COMMUNICATION IN RESPONSE TO NOTICE TO  
FILE MISSING PARTS OF APPLICATION AND  
PETITION FOR FIVE MONTHS EXTENSION OF TIME**

In response to a Notice to File Missing Parts of Application under C.F.R. § 1.53(d) (Exhibit A) and in compliance with 37 C.F.R. § 1.63, applicant files herewith four original Declaration and Power of Attorney separately signed by the four inventors (Exhibit B). The Declaration refers to the application's above-identified serial number and filing date. In accordance with the March 7, 2001 Notice, the deadline for submitting the original Declaration was May 7, 2001. Applicant hereby petitions for five months extension of time, from May 7, 2001 to October 7, 2001 to respond to the notice. The fee for a five months extension for a small entity is \$945, and a check for this amount is enclosed. A response is now due October 7, 2001. Therefore, this response is timely filed.

A check in the amount of \$65 is enclosed in payment of the surcharge.

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MAR 9 2002

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03/12/2002 AKELLEY 00000010 09753169

03 FC:197 915.00 OP

Adjustment date: 06/10/2002 AKELLEY

03/12/2002 AKELLEY 00000010 09753169

03 FC:197 915.00 OP

Repln. Ref: 06/10/2002 AKELLEY 0010581800

DOI: 033125 Name/Number: 09753169

FC: 704 \$980.00 CR

Applicant: Cy A. Stein  
U.S. Serial No.: 09/753,169  
Filed: January 2, 2001  
Exhibit 2



Application of : Cy A. Stein  
Serial No. : 09/753,169  
Date Filed : January 2, 2001  
Page 2

No additional fee other than the five months extension fee of \$945, and the surcharge fee of \$65, totaling \$1010, a check for which are enclosed, is deemed necessary in connection with this Communication. In the event that any additional fee is required, authorization is hereby given to charge the amount of any such fee to Deposit Account 03-3125.

Respectfully submitted,

I hereby certify that this correspondence is being deposited this date with the U.S. Postal Service with sufficient postage as first class mail in an envelope addressed to:  
Assistant Commissioner of Patents,  
Washington, D.C. 20231.

Peter J. Phillips 9/26/01  
Peter J. Phillips Date  
Reg. No. 29,691

Peter J. Phillips  
John P. White  
Registration No. 28,678  
Peter J. Phillips  
Registration No. 29,691  
Attorneys for Applicants  
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1185 Avenue of the Americas  
New York, New York 10036  
(212) 278-0400

COOPER & DUNHAM LLP  
PTO ACCOUNT  
1185 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

HSBC   
HSBC Bank USA

P 50497

1-108/210

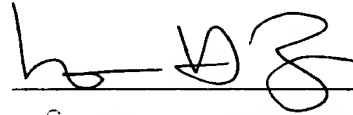
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AMOUNT  
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One Thousand Ten and No/100 Dollars-----

THE  
DER

Commissioner of Patents  
and Trademarks



SECURITY FEATURES INCLUDED. DETAILS ON BACK.



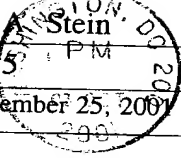
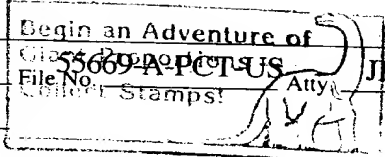
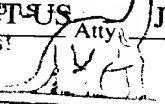
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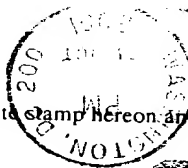
Applicant: Cy A. Stein  
U.S. Serial No.: 09/753,169  
Filed: January 2, 2001  
Exhibit 3

Applicant Cy A. Stein   
Client 0575 PM  
Date September 25, 2001  
 SM8  
Attorney JPW/PJP  
Collector Stamp: 

Kindly acknowledge receipt of the accompanying  
**Communication In Response To Notice To File Missing Parts Of Application &  
Petition For Five Months Extension Of Time;** in connection with Cy A. Stein, for  
OLIGONUCLEOTIDE INHIBITORS OF BCL-XL, U.S. Serial No. 09/753,169,  
filed January 2, 2001, a check in the amount of \$1010 (\$65 for surcharge), (\$945 for  
5 months extension) and a Certificate of Mailing dated September 25, 2001.

**Due Date: October 7, 2001.**

by placing your receiving date stamp hereon and returning to us.



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**MAR 12 2002**

**OFFICE OF PETITIONS**

Applicant: Cy A. Stein  
U.S. Serial No.: 09/753,169  
Filed: January 2, 2001  
Exhibit 4

#12

## SEQUENCE LISTING

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RECEIVED

MAR 12 2002

OFFICE OF PETITIONS

Applicant: Cy A. Stein  
U.S. Serial No.: 09/753,169  
Filed: January 2, 2001  
Exhibit 5

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : Cy A. Stein  
Serial No.: 09/753,169  
Filed : January 2, 2001  
For : OLIGONUCLEOTIDE INHIBITORS OF bcl-xL

1185 Avenue of the Americas  
New York, New York 10036  
December 26, 2001

Honorable Commissioner for Patents and Trademarks  
Washington, D.C. 20231

Sir:

STATEMENT IN ACCORDANCE WITH 37 C.F.R. §1.821(f)

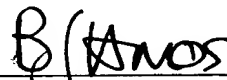
In accordance with 37 C.F.R. §1.821(f), I hereby certify that the computer readable form containing the nucleic acid and/or amino acid sequences required by 37 C.F.R. §1.821(e) and submitted herewith in connection with the above-identified application contains the same information as the written "Sequence Listing" (24 pages) (Exhibit 7) that is submitted herewith in connection with the above-identified application.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these were made with the knowledge that wilful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such wilful false statements may jeopardize the validity of the application or any patent issued thereon.

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Respectfully submitted, OFFICE OF PETITIONS



Brian J. Amos  
Cooper & Dunham LLP  
1185 Avenue of the Americas  
New York, New York 10036  
(212) 278-0400

JPW



## UNITED STATES PATENT AND TRADEMARK OFFICE

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APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NUMBER
09/753,169	01/02/2001	Cy A. Stein	55669-A-PCT-US/JPW/GJC

CONFIRMATION NO. 9695

## FORMALITIES LETTER



\*OC00000005836953\*

Cooper & Dunham LLP  
1185 Avenue of the Americas  
New York, NY 10036

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MPExt: 7/7/2001

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MPExt: 9/7/2001

MPDendin: 10/7/2001

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## NOTICE TO FILE MISSING PARTS OF NONPROVISIONAL APPLICATION

FILED UNDER 37 CFR 1.53(b)

Filing Date Granted

An application number and filing date have been accorded to this application. The item(s) indicated below, however, are missing. Applicant is given TWO MONTHS from the date of this Notice within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a).

- The oath or declaration is unsigned.
- To avoid abandonment, a late filing fee or oath or declaration surcharge as set forth in 37 CFR 1.16(e) of \$65 for a small entity in compliance with 37 CFR 1.27, must be submitted with the missing items identified in this letter.
- The balance due by applicant is \$ 65.
- This application clearly fails to comply with the requirements of 37 C.F.R. 1.821-1.825. Applicant's attention is directed to the final rulemaking notice published at 55 FR 18230 (May 1, 1990), and 1114 OG 29 (May 15, 1990). If the effective filing date is on or after July 1, 1998, see the final rulemaking notice published at 63 FR 29620 (June 1, 1998) and 1211 OG 82 (June 23, 1998). If the effective filing date is on or after September 8, 2000, see the final rulemaking notice published in the Federal Register at 65 FR 54604 (September 8, 2000) and 1238 OG 145 (September 19, 2000). Applicant must provide an initial computer readable form (CRF) copy of the "Sequence Listing", an initial paper or compact disc copy of the "Sequence Listing", as well as an amendment directing its entry into the application. Applicant must also provide a statement that the content of the sequence listing information recorded in computer readable form is identical to the written (on paper or compact disc) sequence listing and, where applicable, includes no new matter, as required by 37 CFR 1.821(e), 1.821(f), 1.821(g), 1.825(b), or 1.825(d). If applicant desires the sequence listing in the instant application to be identical with that of another application on file in the Patent and Trademark Office, such request in accordance with 37 CFR 1.821(e) may be submitted in lieu of a new CRF.

For questions regarding compliance to these requirements, please contact:

- For Rules Interpretation, call (703) 308-4216
- To Purchase PatentIn Software, call (703) 306-2600

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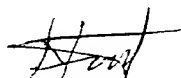
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Exhibit A

- For PatentIn Software Program Help, call (703) 306-4119 or e-mail at [patin21help@uspto.gov](mailto:patin21help@uspto.gov) or [patin3help@uspto.gov](mailto:patin3help@uspto.gov)

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*A copy of this notice **MUST** be returned with the reply.*



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PART 1 - ATTORNEY/APPLICANT COPY

Declaration and Power of Attorney

I hereby claim the benefit under Title 35, United States Code, Section 119(e) of any United States provisional application(s) listed below:

<u>Provisional Application No.</u>	<u>Filing Date</u>	<u>Status</u>
N/A		

I hereby claim the benefit under Title 35, United States Code, Section 120 of any United States Application(s), or Section 365(c) of any PCT International Application(s) designating the United States listed below. Insofar as this application discloses and claims subject matter in addition to that disclosed in any such prior Application in the manner provided by the first paragraph of Title 35, United States Code, Section 112, I acknowledge the duty to disclose to the United States Patent and Trademark Office all information known to me to be material to patentability as defined in Title 37, Code of Federal Regulations, Section 1.56, which became available between the filing date(s) of such prior Application(s) and the national or PCT international filing date of this application:

<u>Application Serial No.</u>	<u>Filing Date</u>	<u>Status</u>
09/109,614	2 July 1998	pending
PCT/US99/15250	2 July 1999	pending

And I hereby appoint

John P. White (Reg. No. 28,678); Christopher C. Dunham (Reg. No. 22,031); Norman H. Zivin (Reg. No. 25,385); Jay H. Maioli (Reg. No. 27,213); William E. Pelton (Reg. No. 25,702); Robert D. Katz (Reg. No. 30,141); Peter J. Phillips (Reg. No. 29,691); Wendy E. Miller (Reg. No. 35,615); Richard S. Milner (Reg. No. 33,970); Robert T. Maldonado (Reg. 38,232); Paul Teng (40,837); Richard F. Jaworski (Reg. No. 33,515); Elizabeth M. Wieckowski (Reg. No. 42,226); Pedro C. Fernandez (Reg. No. 41,741); Gary J. Gershik (Reg. No. 39,992); Jane M. Love (Reg. No. 42,812); Spencer H. Schneider (Reg. No. 45,923) and Raymond A. Diperna (Reg. No. 44,063).

and each of them, all c/o Cooper & Dunham LLP, 1185 Avenue of the Americas, New York, New York 10036, my attorneys, each with full power of substitution and revocation, to prosecute this application, to make alterations and amendments therein, to receive the patent, to transact all business in the Patent and Trademark Office connected therewith and to file any International Applications which are based thereon under the provisions of the Patent Cooperation Treaty.

<i>Prior Foreign Application(s)</i>			<i>Priority Claimed</i>	
<u>Number</u>	<u>Country</u>	<u>Filing Date</u>	<u>Yes</u>	<u>No</u>
PCT/US99/15250	PCT	2 July 1999	x	



Please address all communications, and direct all telephone calls, regarding this application to:

John P. White

Reg. No. 28,678

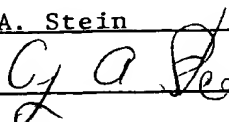
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I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Full name of sole or

first joint inventor Cy A. Stein

Inventor's signature



Citizenship United States of America Date of signature \_\_\_\_\_

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inventor (if any) \_\_\_\_\_

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